

Atty. Docket No. 166.0001
Appl. No. 09/957,459

PATENT

REMARKS/ARGUMENTS

Applicants wish to thank the Examiner for his time during the interview on February 10, 2004. During the interview, Applicants discussed how the claims of the invention are distinguishable over the art of record. Applicants reached an agreement with the Examiner that claims 1-18 and 34-51 are patentable over the art of record. The Examiner informed the Applicants, however, that additional searching for art will be conducted.

The title of the application has been amended to replace the current title with "An Automatic Real-Time File Management Method and Apparatus."

Claim 7 has been amended to change its dependency from claim 6 to claim 2. Claim 10 has been amended to correct an antecedent basis problem. Claim 34 has been amended to correct a minor editorial problem. Claim 36 has been amended to change its dependency from claim 35 to claim 34. Claims 19-33 have been canceled. New claims 52-57 have been added. The claims add no new matter to the specification. Support for new claims 52 and 53 may be found at page 13, paragraph 48 and page 14, paragraph 50 of the specification, for example. Support for new claims 54 and 55 may be found at page 9 of the specification. Support for new claims 56 and 57 may be found at page 7 of the specification.

1. Rejection of claims under 35 U.S.C. §103 over Midgley *et al.*

Claims 1-18 have been rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent No. 6,460,055 B1 issued to Midgley (hereinafter Midgley). See Office Action, at Page 2. Applicants respectfully traverse this rejection. As discussed during the interview, the official action has failed to establish a *prima facie* case of obviousness and has fundamentally erred in assessing the scope and content of the reference. In particular, the official action asserts that the reference Midgley teaches the steps of independent claim 1 which include, "detecting an instruction from a resident program to perform an operation on an operating file" and "capturing the operating file temporally proximate to the operation being performed on the operating file, responsive to the detection of the instruction." See Office Action at Page 2. This

Atty. Docket No. 166.0001
Appl. No. 09/957,459

PATENT

assertion is unsupported by Midgley. The official action has further alleged that Midgley teaches a source data file in lieu of an operating file. See Office Action at Page 3.

Midgley, the cited reference, teaches systems and methods for providing continuous backup of data stored on a computer network. The systems include a synchronization replication process that replicates selected source data files on the system, thereby creating a corresponding set of replicated data files known as target data files. In addition to the synchronization replication process, the system includes a dynamic replication process that includes a plurality of agents which monitor file access operations for a server on the system. See Midgley, column 1, line 65 – column 2, line 11.

According to Midgley, the agents can monitor the activities of each of the servers to detect when a user changes one of the imaged or replicated files. The agent processes can then create a record of the changes made to a particular file and store that record within a journal file that tracks the changes made by the user. See Midgley *et al.*, column 7, lines 46-55.

The method of the present invention, as defined by claim 1, includes the steps of, "detecting an instruction from a resident program to perform an operation on an operating file," and "capturing the operating file temporally proximate to the operation being performed on the operating file, *responsive to the detection of the instruction* [emphasis added]." Thus, in the present invention, capturing of the file occurs *in response to* detecting the instruction.

In direct contrast, the dynamic replication process disclosed in Midgley replicates files stored on the network to create a corresponding set of replicated files. The replication, however, does not occur responsive to the detection of an instruction. See Midgley, Column 2, lines 1-11. Thus, Applicants respectfully submit that Midgley does not teach or suggest a method which includes capturing an operating file responsive to a detection of an instruction.

Therefore, as agreed to during the interview, claim 1 is patentable over Midgley. Claims 2-18 depend from independent claim 1. Thus, by definition, claims 2-18 are patentable over Midgley for at least the reasons offered with respect to independent claim 1.

Atty. Docket No. 166.0001
Appl. No. 09/957,459

PATENT

2. Rejection of claims under 35 U.S.C. §103 over Schmidt *et al.*

Claims 19-33 have been rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent No. 6,535,894, issued to Schmidt (hereinafter Schmidt). Applicants have cancelled claims 19-33 without prejudice to possibly pursue these claims in another application. Thus, Applicants respectfully submit that this rejection is now moot in light of the cancellation of these claims.

3. Rejection of claims under 35 U.S.C. §103 over Midgley *et al.* in view of Schmidt *et al.*

Claims 34-51 have been rejected under 35 U.S.C. §103(a) over Midgley in view of Schmidt. Applicants respectfully traverse this rejection. The official action has failed to establish a *prima facie* case of obviousness and has fundamentally erred in assessing the scope and content of the references.

In particular, the official action has alleged that Midgley teaches, in a computing device, a method for archiving files including, detecting an instruction from a resident program to perform an operation on an operating file and creating an archive file from the operating file and storing the archive file in a first storage location temporally proximate to the operation being performed on the operating file, responsive to detecting the instruction. See Office Action, at Page 8. The official action states that Midgley does not explicitly teach the steps of "searching the first storage location for the archive file responsive to the occurrence of a first event" and "moving the archive file from the first storage location to the second storage location, responsive to a second event." The official action, however, alleges that Schmidt does teach these steps. See Office Action, at Page 9. As previously discussed, Midgley teaches systems and methods for providing continuous backup of data stored on a computer network.

The method of the present invention, as defined by claim 34 includes the steps of, "detecting an instruction from a resident program to perform an operation on an operating file" and "creating an archive *file* from the operating file and storing the archive file in a first storage location temporally proximate to the operation being performed on the operating file and *responsive to detecting the instruction*

Atty. Docket No. 166.0001
Appl. No. 09/957,459

PATENT

[emphasis added].” Thus, in the present invention, an archive *file* is created *in response* to detecting the instruction.

In direct contrast, the agent processes of Midgley detect when a user changes one of the imaged or replicated files and creates a record of the *changes* made to the file. See Midgley, Column 7, lines 51-55. Applicants therefore submit that the record in Midgley is a record of *changes*, not the actual file itself. Applicants further submit that the creation of the record of changes does not occur *responsive to detecting an instruction*.

Thus, Applicants respectfully submit that Midgley does not teach or suggest a method which includes creating an archive file from the operating file and storing the archive file in a first storage location temporally proximate to the operation being performed on the operating file and responsive to detecting the instruction.

Likewise, Schmidt offers no teaching of a method which includes creating an archive file from an operating file responsive to detecting the instruction. Accordingly, neither Midgley nor Schmidt, either alone or in combination would have rendered the subject matter of claim 34 obvious. It follows that claim 34 is properly allowable.

Dependent claims 35-51 depend from independent claim 34. Thus, by definition, these claims are likewise properly allowable for at least the reasons offered above with respect to claim 34.

In view of the above Remarks, Applicants believe that all of the claims of the present invention are allowable and that the application is in condition for allowance. If the Examiner believes that the prosecution could be advanced through a telephone conversation, then the Examiner is invited to telephone the undersigned. Favorable action in this regard is earnestly solicited.

Atty. Docket No. 166.0001
Appl. No. 09/957,459

PATENT

Respectfully submitted,
CAHN & SAMUELS, L.L.P.

By: 

Reginald D. Lucas, Reg. No. 46883
2000 P St., NW, Ste. 200
Washington, D.C. 20036
Telephone: (202) 331-8777
Fax: (202) 331-3838

February 18, 2004